

# **Central Administrative Tribunal Principal Bench**

**OA- 4307/2013**

Order Reserved on: 29.08.2018  
Order Pronounced on: 31.08.2018

**Hon'ble Ms. Nita Chowdhury, Member (A)  
Hon'ble Mr. S.N. Terdal, Member (J)**

1. Jayvinder Singh  
S/o Sh. Chanderbhan  
Aged about 53 years  
H.No. 9/2, MCD Flat, Moden Town – III  
Delhi.
2. Gajender Singh  
S/o Sh. Prehlad Singh  
Aged about 49 years  
H.No. 9/2, MCD Flat  
Naniwala Bagh, Azadpur

(By Advocate : Mr. Sanjay Ghosh)

## Versus

The Commissioner  
North Delhi Municipal Corporation  
Civic Centre, Jawhar Lal Nehru Marg  
Minto Road, New Delhi – 110002.

### ....Respondent

(By Advocate : Mr. RK Jain)

## ORDER

## **Hon'ble Ms. Nita Chowdhury, Member (A)**

The applicants have filed this Original Application seeking the following reliefs:-

“i) Direct the Respondent that any trade test should treat the applicant (and persons similarly situated) as a different class of persons given the fact that the applicants have been officiating as Garden

Chaudharies from so many years till date and to permit the applicants to participate in the trade test without objecting to their eligibility on the ground that they do not possess the educational qualification of "High School with Agriculture" and/or (only for the purposes of the trade test) to take into account their service prior to their regularization as a mali to compute the length of service as a regular mali.

ii) In the alternative, declare that the Recruitment Rules for the post of Garden Chaudhary (to the extent it does not permit any relaxation of eligibility criteria to address exigent circumstances) is arbitrary, unjust, oppressive and unconstitutional being ultra vires of Articles 14, 16 and 21 of the Constitution of India."

2. It is the case of the applicants that they have been assigned duties by Deputy Director (Horticulture) in the officiating capacity on the posts of Garden Chaudhary after completion of long tenure as Malies and therefore, they may be permitted to participate in the trade test by treating them as a different class of persons given the fact that they have officiated on the said posts for so many years and thereby exempting them from education/qualification.

3. A perusal of the order-sheet dated 12.12.2013 of this Tribunal reveals that the applicants were allowed to participate in the trade test to be conducted on 12<sup>th</sup>/13<sup>th</sup>/14<sup>th</sup> December, 2013. However, it was informed that the applicants were not promoted to the post of

Garden Chauhary as they did not meet the requisite educational criteria as per the recruitment rules.

4. The respondents have also filed their reply and are also able to show at the first instance that the applicants have already filed Industrial Dispute before POIT-II, Karkardooma Courts with the terms of reference as under:-

“ i. ID No.58/2010 between the management of MCD and its workman Sh. Jaivinder Singh S/o Sh. ChanderBhan.

“Whether Sh. Jaivinder Singh S/o Sh. ChanderBhan, Mali was assigned the job of Chaudhary by the management and if so, whether he is entitled to the status as Chaudhary& pay scale attached to this post; and if so, whether he is entitled to the status as Chaudhary& pay scale attached to this post; and if so, from which date and what directions are necessary in this respect.”

ii. ID No.28/2013 beween Sh. Gajender Singh S/o Sh. Prahlad and North Delhi Municipal Corporation

“Whether Sh. Gajender Singh S/o Sh. Prahlad is entitled to the status of Chaudhary in the pay scale of Rs.950-1500 with effect from 03.04.1995 revised from time to time alongwith all consequential benefits and if so, to what relief is he entitled and what directions are necessary in this respect.”

5. Quite clearly, the applicants have approached the Industrial Tribunal for the same reliefs as prayed by them in the present OA. This fact has also not been disputed by the applicants either by filing the rejoinder or during arguments. Hence, the OA is liable to be dismissed on this sole ground.

6. Even on merits of the case, the respondents are able to show that Deputy Director (Horticulture) is not the competent authority for making promotion of Mali to the post of Garden Chaudhary on officiating/current duty charge/ad hoc or regular basis. The eligible employees were promoted to the post of Garden Chaudhary as per the provisions of recruitment regulations which read as under:-

- “(a) 50% by direct recruitment
- (b) 50% by promotions from the eligible candidates
  - a. Having educational qualification of High School with Agriculture subject
  - b. Hedgeman and Mechaneman with 05 years regular service in the respective grade& Mali/Chowkidar/Bullockman with 08 years’ service in the grade.
  - c. Passing of trade test.”

Hence, the respondents have fairly submitted that the applicants could not be promoted to the said post as they

have not the requisite qualification, i.e. High School as per the recruitment rules.

7. In view of the aforesaid facts and circumstances and keeping in view that the applicants have already approached the Industrial Tribunal for the same relief, the OA is liable to be dismissed and the same is hereby dismissed. No order as to costs.

**(S.N. Terdal)**  
**Member (J)**

**(Nita Chowdhury)**  
**Member (A)**

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